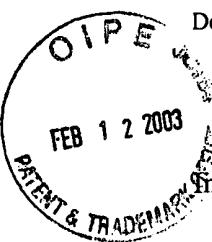


IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

FEB 12 2003



In re the application of

Melchione

Application No. 09/585,811

Filed: May 31, 2000

For: SYSTEM, METHOD AND
COMPUTER PROGRAM PRODUCT FOR
PROCESS-BASED SELECTION OF VIRUS
DETECTION ACTIONS

Group Art Unit: 2785

Examiner: Unassigned

Docket No. NAI1P004_00.006.01

Date: February 7, 2003

RECEIVED

FEB 19 2003

Technology Center 2100

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, DC 20231 on February 7, 2003.

Signed:

Erica L. Farlow

Commissioner for Patents
Washington D.C. 20231

02/13/2003 SZEWDIE1 00000070 09585811

01 FC:1460

130.00 DP

PETITION TO MAKE SPECIAL
37 C.F.R. 1.102 and MPEP § 708.02(XI)

Sir:

I hereby petition for Advancement of Examination of the above referenced application under 37 C.F.R. 1.102 and MPEP 708.02(XI).

As the undersigned practitioner, being duly registered to practice before the U.S. Patent and Trademark Office, I make the following statements in support of this petition.

As set forth under MPEP 708.02(XI), 'in view of the importance of developing technologies for countering terrorism and the desirability of prompt disclosure of advances made in these fields, the U.S. Patent and Trademark Office will accord "special" status to patent applications relating to counter-terrorism inventions.' (emphasis added).

Moreover, MPEP 708.02(XI) further states that 'international terrorism as defined in 18 U.S.C. 2331 includes "activities that - (A) involve violent acts ... that would be a criminal violation if committed within the jurisdiction of the United States or of any State; [and] (B) appear to be intended - (i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation..."'

Applicant emphasizes that 18 U.S.C. 2332b (as amended by the 2001 US Patriot Act) further relates to “[a]cts of terrorism transcending national boundaries” and defines a “[f]ederal crime of terrorism” as an offense that:

“(A) is calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct; and

(B) is a violation of-- ... 1030(a)(1) (relating to protection of computers), 1030(a)(5)(A)(i) resulting in damage as defined in 1030(a)(5)(B)(ii) through (v) (relating to protection of computers) ...”

where 18 U.S.C. 1030 sets forth fraud and related activity in connection with computers as applying to:

“(a) Whoever -

(1) having knowingly accessed a computer without authorization or exceeding authorized access, and by means of such conduct having obtained information that has been determined by the United States Government pursuant to an Executive order or statute to require protection against unauthorized disclosure for reasons of national defense or foreign relations, or any restricted data, as defined in paragraph y of section 11 of the Atomic Energy Act of 1954, with reason to believe that such information so obtained could be used to the injury of the United States, or to the advantage of any foreign nation willfully communicates, delivers, transmits, or causes to be communicated, delivered, or transmitted, or attempts to communicate, deliver, transmit or cause to be communicated, delivered, or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it to the officer or employee of the United States entitled to receive it;”

“(5)(A)(i) knowingly causes the transmission of a program, information, code, or command, and as a result of such conduct, intentionally causes damage without authorization, to a protected computer;”

“(5)(B) by conduct described in clause (i), (ii), or (iii) of subparagraph (A), caused (or, in the case of an attempted offense, would, if completed, have caused)”

“(ii) the modification or impairment, or potential modification or impairment, of the medical examination, diagnosis, treatment, or care of 1 or more individuals;

(iii) physical injury to any person;

(iv) a threat to public health or safety; or

(v) damage affecting a computer system used by or for a government entity in furtherance of the administration of justice, national defense, or national security...”

Moreover, the actions explicitly defined by 18 U.S.C. 2332b as constituting terrorism further meet the definition of “international terrorism” set forth in 18 U.S.C. 2331, since such actions include “activities that - (A) involve violent acts ... that would be a criminal violation if

committed within the jurisdiction of the United States or of any State; [and] (B) appear to be intended - (i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation..."

Applicant notes the following definition of "violent" from Webster's Revised Unabridged Dictionary.

violent - 2. Acting, characterized, or produced by unjust or improper force; outrageous; unauthorized; as, a violent attack on the right of free speech. - *Webster's Revised Unabridged Dictionary, © 1996, 1998 MICRA, Inc.*

With the foregoing actions of 18 U.S.C. 2332b being clearly defined as terrorism by statute, the present claimed invention counters such actions in the following manner. Specifically, the present claimed invention includes a technique for on-access computer virus scanning of files. Initially, a process for accessing files is identified. Thereafter, virus detection actions are selected based at least in part on the process. The virus detection actions are then performed on the files.

By doing so, the present claimed invention protects against the actions defined in 1030(a)(5)(A)(i) resulting in damage as defined in 1030(a)(5)(B)(ii) through (v) above by preventing a person from transmitting an unauthorized program, information, code, and/or command (i.e. a virus, etc.) to a computer on a protected network equipped with a firewall or the like.

Thus, the present claimed invention contributes to countering terrorism by preventing the actions that are explicitly defined as a "[f]ederal crime of terrorism" by 18 U.S.C. 2332b and which clearly meet the definition of "international terrorism" by 18 U.S.C. 2331. Specifically, the present claimed invention prevents the actions set forth in 1030(a)(5)(A)(i) resulting in damage as defined in 1030(a)(5)(B)(ii) through (v), in situations where such actions are conducted as part of an offense that is calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct.

FEES

Attached is a check in the amount of \$130 for the Petition fee. However, if it is determined that any additional fee is due the Office is authorized to charge the amount or credit any overpayment to deposit account 50-1351 (Order No. NAI1P004). A duplicate copy of this petition is enclosed for billing purposes.

Silicon Valley IP Group
P.O. Box 721120
San Jose, California 95172-1120

Telephone: 408.971.2573
Facsimile: 408.971.4660

Respectfully Submitted,

Kevin J. Zilka
Reg. No. 41,429